

**U.S. SENATE COMMERCE COMMITTEE**  
**WRITTEN TESTIMONY OF**  
**MISSISSIPPI ATTORNEY GENERAL MIKE MOORE**  
**February 26, 1998**

Mr. Chairman and members of the committee, I take this opportunity to submit this written testimony for your consideration on the comprehensive tobacco legislation now before your committee.

The proposed settlement negotiated between the States' Attorneys General and the tobacco industry last June is an effort, the first, to comprehensively deal with the public health crisis of tobacco use. The adverse impact of tobacco on our nation's children is of particular concern to me and my colleagues, as it is to many others. Over 3,000 kids a day begin smoking, over 1,000 of whom will die an early death from tobacco related diseases. This means that about 650,000 kids have started smoking since the Attorneys' General agreement with the tobacco industry was announced June 20, almost a quarter million of these kids will die an early death.

The Attorneys' General proposed comprehensive settlement codifies FDA jurisdiction over nicotine, currently being challenged in the courts, and extends it to tars and other harmful components of tobacco smoke. The industry has so far successfully challenged the FDA's advertising restrictions in court. The proposed settlement includes the FDA's advertising restrictions, but goes much further. The settlement contains broad advertising and promotional constraints on the tobacco industry. For example, all outdoor advertising would be banned. The settlement also provides significant financial penalties to the industry for failure to meet measured goals in reducing youth smoking levels, provides a nationwide retail licensing program applicable to states, Indian tribes and federal government, and gives strong financial incentives to ensure that laws against underage tobacco sales are enforced. In exchange for agreeing to this unprecedented regulation, the tobacco companies sought limited protection from civil liability for past conduct.

In addition to the regulatory program, the companies have agreed to a funding package for a range of public health programs, some aimed at countering the impact of the industry's advertising over the years. The funding package is \$368.5 billion in 1997 dollars over 25 years, the largest settlement in world history. Of the total, \$500,000,000 annually would be to fund a comprehensive public education campaign to discourage and de-glamorize the use of tobacco products. Additionally

\$100,000,000 would go annually toward funding research on how best to discourage individuals from starting to use tobacco, and how to effectively quit if they have started. A fund would be created to assist individuals who want to quit using tobacco, funded the first four years at \$1 billion annually, growing to \$1.5 billion annually thereafter. The entire funding package would be paid for by a per pack price increase, so important in discouraging teenagers to smoke.

Critics of the proposed comprehensive settlement have argued that the tobacco companies should not receive any protection from civil liability because Congress has the authority to impose the public health provisions of the agreement regardless of the tobacco industry's wishes. Without conceding that point, I would like to focus on one critical component of the proposed settlement where the authority of Congress to act is clearly open to legal challenge: the advertising and promotional restrictions aimed at stopping the marketing of tobacco products to our kids.

The proposed comprehensive settlement would ban all outdoor advertising. The use of human images and cartoon characters in ads would be prohibited. Advertising in sports stadia and the sponsorship of sporting events would also be banned. Ads in stores would be severely limited in size, content, number and location. Ads in magazines with a youth oriented readership would be severely limited. Tobacco companies would be prohibited from promoting their products, directly or indirectly, on television and in movies, plays and concerts. Advertising on the Internet accessible to the United States would be prohibited. Sales by vending machine would be prohibited. Promotional products, such as baseball-like caps and backpacks, could not carry a brand name or the company's logo, nor be provided as rewards for purchasing tobacco products.

This level of industry-wide advertising restrictions is unprecedented. The scope of these limitations raises the issue of whether they would be an unconditional restraint of commercial free speech. A legislature has greater power to regulate commercial speech than that of an individual, and the industry's practice of targeting underage youth is the subject of legitimate legislative oversight, but the constitutional question remains. However, the major tobacco manufacturers have voluntarily agreed to the advertising constraints in the agreement. They cannot legally challenge these restrictions. The advertising constraints will be part of a binding settlement agreement, enforceable through consent decrees in those state with lawsuits pending, and by contract in those states without lawsuits.

The advertising and promotional restrictions in the proposed settlement are essential to its success. We must turn off the “Do Smoke” sign and turn on the “Don’t Smoke” sign if we are to be successful. There is no question in my mind that the tobacco industry advertises and engages in other promotional activities to entice kids, those under the age of 18, into becoming addicted to their products. The tobacco industry strategy outlined in the documents that are now becoming public, of which we were well aware while negotiating with the companies, clearly show that the companies target youth under the age of 18. Industry documents discussing how to attract 14 year olds as customers are not typographical errors. Over 420,000 Americans die each year from tobacco related illnesses. Industry documents go so far as to refer to underage smokers as the “replacement pool” for those 420,000 deaths.

As Attorneys General charged with enforcing consumer protection laws, we know all too well the impact advertising and marketing has on consumers. That’s why the industry spends about \$6 billion a year on this, much of it aimed at our kids.

A number of independent studies uniformly conclude what the industry’s own documents show, that tobacco industry advertising and promotional activities have been very effective in encouraging kids to begin smoking. Sharp increases in youth smoking rates have been shown to directly coincide with tobacco industry advertising campaigns, while since the first Surgeon General’s report in 1964 there have not been similar increases in adult smoking rates. This is well illustrated by R. J. Reynolds’ initiation of the “Joe Camel” campaign in advertising Camel cigarettes, which has, unfortunately, been remarkably popular with kids, particularly those between 12 and 15. It has also been remarkably profitable for RJR, increasing their share of the under 18 market from 1/2 percent when the Joe Camel campaign began, to 33 percent when the campaign was withdrawn.

Two studies in the most recent edition of the Journal of the American Medical Association (February 18, 1998) show the impact on kids of tobacco industry advertising and promotional campaigns. In an article by Dr. Charles King and others, they demonstrate that cigarette brands most popular with under 18 youth are most likely to advertise in the magazines with the highest readership of that age group. Over half of the industry’s advertising expenditures have been on magazine ads. The authors did not find as strong a correlation between cigarette brands and advertising placement in magazines appealing to 18-24 year olds, rebutting the industry’s usual defense that they don’t target those under 18.

The second JAMA article, by Dr. John Pierce and others, examined the relationship between tobacco industry promotional items, such as caps and bags with brand or company logos, and the inclination of kids to start smoking. The study looked only at youth under 18 who indicated in a 1993 survey that they had never smoked, and were not inclined to do so. The researchers asked in 1993 a series of questions about awareness of advertising and promotional campaigns, and the likelihood of using promotional items. In revisiting these teens in 1996, the authors found that 34 percent of smoking initiation among this group was attributable to tobacco promotional activities alone. Of those studied, youth that were highly attracted to promotional items were 8 times more likely to have begun smoking in the interim than those who were not. The study also found that those 16-17 year olds interviewed in 1993 who had never smoked were only half as likely to begin smoking than younger adolescents, concluding that “[o]nce people are old enough to rationally evaluate the well-known health risks of smoking, they choose not to start smoking.”

These two JAMA articles only buttress the conclusion that the tobacco companies have engaged in a carefully planned marketing strategy to target our kids. We are beginning to learn more too about the effectiveness of counter- advertising campaigns aimed at offsetting the impact the tobacco industry’s ads have had on our kids. California mounted a counter advertising campaign in the face of increasing tobacco ads. They were able to at least hold level the rate of youth smoking. When a ban on tobacco advertising affecting youth is put in place, a counter-advertising campaign, along with other programs part of the comprehensive plan, can be expected to significantly reduce the rate at which our young people are beginning to smoke.

The tobacco industry has not only targeted underage youth with its advertising and marketing campaigns, the industry has targeted women and minorities as well. Beginning with the Virginia Slims campaign, “You’ve come a long way, baby!”, we saw a sharp rise in smoking rates among women. Tragically, we also are now seeing a corresponding rise in the rate of lung cancer among women. The smoking rate among men peaked in 1965, right after the first Surgeon General’s report, while the smoking rate among women did not peak until 1978, over 10 years later. However, smoking among underage high school girls has increased almost 50 percent since 1991. One in three 10<sup>th</sup> grade girls now smoke, more than 10<sup>th</sup> grade boys.

The industry has also specifically targeted African-Americans and other minority groups with specially tailored campaigns. Emerging industry documents, of which we have been aware for some time, make this quite clear. The smoking prevalences among white and African-American adults are approximately equal, just below 30 percent, and have been declining for some time. However, smoking among African-American high school kids has almost doubled since 1991. Smoking among Hispanic youth has increased by one third in the same time. American Indians/Alaska Natives have the highest smoking rates of any ethnic group at 36.2 percent. While American Indian/Alaska Native high school boys mirror the adult rate, 44 percent of high school girls now smoke. We must do everything possible to reverse these trends.

When the FDA adopted its rules, it projected that those rules would reduce underage smoking by 50 percent, saving over 60,000 early deaths of teenagers who would otherwise start smoking. The terms of the proposed settlement go much further. If the FDA rules could accomplish their goal, imagine what can be accomplished by the added advertising and marketing restrictions of the proposed settlement, and by the entire comprehensive agreement.

The Attorneys General knew while negotiating that there is no silver bullet which will solve this national health crisis. We also were aware that the advertising and marketing restrictions we sought could be subject to constitutional challenge and, at a minimum, be tied up in the courts for years. The comprehensive plan we developed does what no legislation or litigation can do -- it stops advertising and marketing to our youth immediately. While very difficult for us, we concluded that limited liability protection for the industry was worth the lives we could save now and into the future.

We cannot afford to delay any longer. I ask Congress to enact comprehensive tobacco legislation now, before even more kids become addicted to tobacco, 420,000 more people die, and the entire nation suffers the consequences in both human and financial terms.